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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20054

In the Matter of

§

Implementation of the Subscriber Carrier
Selection Changes Provisions of the
Telecommunications Act of 1996

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§

§

Policies and Rules Concerning
Unauthorized Changes of Consumers'
Long Distance Carriers

§

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CC Docket No. 94-129

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COMMENTS OF
THE PUBLIC UTILITY COMMISSION OF TEXAS

I. INTRODUCTION

1. On July 15, 1997, the Federal Communications Commission (FCC) released its Further Notice of Proposed Rulemaking in this proceeding.¹ The Public Utility Commission of Texas (PUCT), having been given general regulatory authority over public utilities within our jurisdiction in Texas, hereby submits these Comments on proposed modifications to the FCC's rules concerning unauthorized changes of consumers' long distance carriers.

2. The PUCT strongly supports the FCC's "two-pronged" approach to deter the practice of unauthorized carrier changes, or "slamming." The combined effect of the enhanced verification procedures and the proposed economic penalties delivers a strong disincentive to the practice of slamming.

¹ *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, *Further Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration*, FCC 97-248 (rel. July 15, 1997).

II. STATUS OF EFFORTS TO DETER SLAMMING IN TEXAS

3. In 1995, the 74th Texas Legislature enacted the Public Utility Regulatory Act,² making substantial revisions to the regulatory framework for telecommunications in our state. The goal of the revisions was to create an environment in which consumers will reap the benefits of competition in telecommunications. These benefits include making available to all customers a choice of providers for all telecommunications services. However, the opening of markets will also bring new slamming opportunities to telecommunications utilities.

4. The PUCT lauds Congress' recognition that unauthorized changes in subscribers' carrier selections is a significant consumer problem. Calls and letters about slamming average 11 percent of all complaints at the PUCT, making it one of the top three issues for the Office of Customer Protection. The PUCT recorded 728 slamming complaints in FY 1997, and 665 complaints in FY 1996. We believe that slamming increases customer cynicism and skepticism regarding the competitive market and is a direct threat to the competitive process. The PUCT recommends that before the FCC adopts any modifications to its slamming rules, it explore and study the methods and procedures by which this practice has been handled by the various states.

5. Recently, the Texas Legislature enacted legislation³ to ensure that all customers are protected from the unauthorized switching of a telecommunications utility. The legislation defined telecommunications service as all local exchange telephone service, interexchange telecommunications service, and other telecommunications services provided by telecommunications utilities in this state. Further, the Texas Legislature directed the PUCT to adopt, by no later than November 1, 1997, nondiscriminatory and competitively neutral rules governing customers' selection of a telecommunications utility. The PUCT rules are to be consistent with the rules and regulations prescribed by

² Public Utility Regulatory Act, 75th Leg., R.S. ch. 166, § 1, 1997 Tex. Sess. Law Serv. 713 (Vernon) (to be codified at TEX. UTIL. CODE ANN. §§ 11.001-63.063) (PURA).

³ Tex. S.B. 253, 75th Leg., R.S. (1997).

the FCC for the selection of telecommunications utilities. The PUCT adopted a slamming rule on September 10, 1997.

III. COMMENTS ON THE FCC's PROPOSED AMENDMENTS TO 47 C.F.R. §64.1100 *et seq.*

A. Requirements of Executing Carriers and Competitive Advantages of the ILECs

6. The FCC seeks comment on whether a promotional letter sent by an incumbent local exchange carrier (ILEC) to a subscriber in an attempt to change a subscriber's decision to switch to another carrier would be inconsistent with the consumer protection and pro-competition goals of the federal Telecommunications Act (FTA).⁴ The PUCT believes that the use of such letters by an ILEC is contrary to the pro-competition goals of the FTA. We note that any carrier can send a promotional letter to a former customer, however the unique position of an ILEC creates a potentially anticompetitive situation. An ILEC participates in the market as both executing carrier and competitor. This dual position offers an ILEC the opportunity to persuade a customer to stay with the ILEC's service before a switch is executed. This situation currently exists in the local market and will potentially exist in the long distance market. The PUCT believes that the best protection against potential anticompetitive behavior by an ILEC is to adopt rules which require the executing carrier, who is often the ILEC, to perform all requested carrier change orders. The PUCT accordingly supports the FCC's proposal that the executing carrier should be solely liable for violating the slamming rules whenever a properly authorized carrier change is not executed.

7. The PUCT recommends that the FCC prescribe rules which require the executing carrier to perform a requested switch within three business days. With the inclusion of this requirement for executing carriers, the PUCT does not believe that it is necessary to restrict ILECs to the independent third-party verification method.

⁴ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 15 and 47 U.S.C.) (FTA).

B. Viability of the "Welcome Package" Verification Option

8. In response to the FCC's inquiry as to whether the welcome package, as described in Section 64.1100(d), continues to be viable, we recommend that the FCC eliminate this option as an authorized verification procedure. The welcome package requires action on the part of the customer to retain the carrier of his choice. While this method is only valid for changes customers have already agreed to, it allows unscrupulous carriers to deceive customers. For example, a customer may believe that an affirmative response to a telemarketer is simply a request for additional information. A telemarketer may portray this as a request for a carrier change and send a welcome package to this customer. The customer may not carefully read this packet or may discard it. Under current FCC rules, an authorized change may then be made in fourteen days.

C. Verification of Preferred Carrier Freezes

9. The FCC seeks comments on whether its verification rules contained in Sections 64.1100 and 64.1150 should apply when carriers solicit subscribers regarding preferred carrier freezes. Based on the PUCT's experience with complaints involving preferred carrier (PC) freeze solicitations, we believe that carriers should not be permitted to act as a consumer's agent in requesting PC freezes. Such requests should be made directly by the consumer to the local exchange carrier. The PUCT notes that a carrier is permitted to act as a customer's agent to effect PC changes in order to facilitate market transactions. PC freezes are protections for the customer, not market transactions.

10. The FCC also notes that ILECs have an enhanced ability to execute unauthorized PC changes on their own behalf or enact PC freezes without proper customer consent. In order to prevent ILECs from establishing PC freezes on their subscribers' accounts without consent, the PUCT believes that consumers should be the sole agents who may request PC freezes.

11. The PUCT agrees that while PC freezes protect customers and decrease market distortions, PC freezes may also limit the level of competition. For example, a customer with a PC freeze request on record may be unwilling to act on his own behalf to change to a competitor's service, even after agreeing to do so. The PUCT believes that a customer

who initiates a PC freeze request is also likely to take the additional step needed to switch carriers. Therefore, the PUCT believes that competition will not be harmed since PC freezes protect consumers while causing little disruption in the marketplace.

12. If the FCC does not accept the PUCT's recommendation that only customers, and not carriers, may act as agents in requesting PC freezes, then we support the extension of the verification procedures to PC freeze requests.

D. Liability of Subscribers to Carriers

13. The FCC seeks comments on whether slammed consumers should have the option of refusing to pay charges assessed by an unauthorized carrier. The PUCT believes consumers should have this option. Individuals should not have to pay a company which has eliminated their choice as a telecommunications customer. The PUCT notes that its adopted rule on slamming does not require customers to pay unauthorized carriers; customers may instead pay the properly authorized carrier for these services.

14. The PUCT strongly opposes any provision which would absolve a customer of liability for legitimate charges assessed by an unauthorized carrier. Such a provision creates a hidden incentive to slam by depriving the authorized carrier of revenue. Unauthorized carriers will lose revenue only when caught, but authorized carriers will lose revenue whenever a customer is slammed. This would only raise the costs of doing business, which would surely be passed on to the customer.

15. Further, establishing a rule that absolves subscribers for charges assessed by an unauthorized carrier could create an incentive for subscribers to both fraudulently claim that an unauthorized change has occurred and to delay the reporting of actual slamming incidents. A customer could "game" the system and receive telephone service for free by repeatedly claiming that a slam had occurred. While the accused carrier would have the opportunity to prove it has obtained proper authorization to make the switch, there are sure to be many cases where such fraudulent claims allow a customer to receive service without a charge. Also, a customer who realizes that he does not need to pay for services after being slammed has an incentive to delay reporting that he has been slammed. Both

of these circumstances allow a customer to receive telephone service for free, which distorts the working of the marketplace just as slamming does.

E. Liability of Unauthorized Carriers to Properly Authorized Carriers

16. The PUCT recommends that the FCC adopt procedures which require the unauthorized carrier to remit all revenue to the properly authorized carrier and the customer. The PUCT's adopted rule requires a telecommunications utility that has initiated an unauthorized change to pay the original telecommunications utility any amount paid by the customer that would have been paid had the unauthorized change not occurred. The unauthorized carrier must also provide to the customer any amount paid in excess of this amount. Remittance of all revenue to the properly authorized carrier and the customer creates an economic disincentive to slam and ameliorates the distortion that occurs from slamming. The unauthorized carrier is not allowed to reap the benefits of its illegal practices, thereby deterring such practices in the future. Also, the customer is not responsible for excessive charges accrued while under service from the unauthorized carrier. This bifurcated procedure which refunds excess charges directly to the customer is more pro-consumer than a requirement that the unauthorized carrier remit all charges received to the properly authorized carrier.

17. The FCC seeks comment as to whether a carrier in violation of the verification procedures should be liable to the properly authorized carrier for expenses incurred to collect the charges from a slammed subscriber. The PUCT believes that while a customer who refuses to pay the unauthorized carrier may also be reluctant to pay the original carrier for services provided by the unauthorized carrier, there is no known process by which such charges can be calculated. The absence of such a mechanism to determine collection costs makes this proposal impracticable.

F. Liability of Carriers to Subscribers

18. The adopted PUCT rule requires that the unauthorized telecommunications carrier pay all usual and customary charges associated with returning the customer to the original telecommunications utility. The unauthorized carrier must also return to the customer

any amount paid which is in excess of the charges that would have been imposed for identical services by the original telecommunications utility. The PUCT believes that the FCC should not limit a customer's right to receive reimbursement of excessive payments. The PUCT reimbursement procedures are aimed at protecting and restoring the rights of slammed consumers. Should the FCC rule not include a provision for remittance directly to the customer, Section 258 of the FTA states that the remedies provided by the FCC are in addition to any other remedies available by law. Therefore, the broader pro-customer provisions of the PUCT rule would provide additional protections to the customer without being preempted by the FCC rule.

19. In order for the subscriber to be "made whole," all benefits or premiums should be restored to the customer. The PUCT agrees that for administrative ease, the original carrier is best prepared to restore premiums and should therefore provide such benefits to the customer upon receipt of payment for all services accrued during the unauthorized change. The PUCT does not believe that unauthorized carriers should be liable to the authorized carrier for the value of premiums. The revenue accrued during the unauthorized provision of service is returned to the authorized carrier, thereby correcting the market disruption. The PUCT believes that the customer is "made whole" and the business of the authorized carrier is effectively restored.

G. Evidentiary Standard Related to Lawfulness of a Resale Carrier's Change in Underlying Network Provider

20. Regarding the identification of the underlying network provider, the PUCT believes it will reduce consumer confusion if the name of the telecommunications utility that is providing service directly to the customer is printed on the first page of each bill sent to a customer. This will allow customers to clearly identify when a carrier other than the carrier of choice is providing their service. The requirement that the underlying network provider be identified, and any establishment of a "bright line" evidentiary standard for determining when such disclosure must be made by a resale carrier, will only cause confusion to the subscriber.

IV. SUMMARY AND CONCLUSION

21. The unauthorized change in a consumer's telecommunications provider continues to be a problem for consumers in Texas. The PUCT supports the FCC's present effort to further deter slamming in all telecommunications markets.
22. The PUCT recommends that the FCC adopt rules which require the executing carrier to perform requested switches within three business days.
23. The PUCT supports the FCC's proposal that the welcome package described in Section 64.1100(d) be eliminated from the authorized verification procedures.
24. The PUCT recommends that only consumers may request PC freezes from their local exchange carriers, and therefore does not support the extension of verification procedures to PC freeze requests.
25. The PUCT believes that customers should have the option of refusing to pay charges assessed by an unauthorized carrier. However, in no event should the customer be absolved from liability for legitimate charges incurred after an unauthorized change.
26. The PUCT recommends that the unauthorized carrier remit all revenue that would have been paid had the slam not occurred to the authorized carrier and remit any excess revenue to the customer. In situations where the customer has not paid the unauthorized carrier, the PUCT believes that the costs of collecting such revenue can only be feasibly borne by the authorized carrier.
27. The PUCT agrees that only the original carrier can properly restore benefits to subscribers.
28. The PUCT recommends that only the telecommunications utility providing the service directly to the customer be identified by printing the name of this carrier on the first page of each bill sent to a customer.

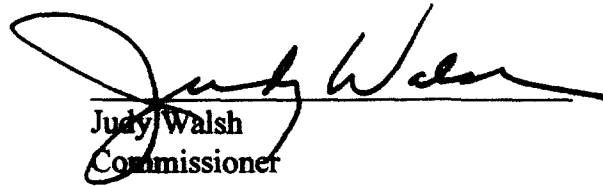
Respectfully submitted,

Public Utility Commission of Texas
1701 N. Congress Avenue, 7th Floor
Austin, Texas 78711

September 11, 1997

A handwritten signature in black ink, appearing to read "Pat Wood, III". The signature is written in a cursive style with a large initial "P".

Pat Wood, III
Chairman

A handwritten signature in black ink, appearing to read "Judy Walsh". The signature is written in a cursive style with a large initial "J".

Judy Walsh
Commissioner

AN ACT

1 relating to the selection of telecommunications utilities by
2 customers.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Subtitle G, Title III, Public Utility Regulatory
5 Act of 1995 (Article 1446c-0, Vernon's Texas Civil Statutes), is
6 amended by adding Sections 3.312 and 3.313 to read as follows:

7 Sec. 3.312. TELECOMMUNICATIONS UTILITY SELECTION RULES.

8 (a) It is the policy of this state to ensure that all customers
9 are protected from the unauthorized switching of a
10 telecommunications utility selected by the customer to provide
11 telecommunications service. Not later than November 1, 1997, the
12 commission shall adopt nondiscriminatory and competitively neutral
13 rules to implement this section, including rules that:

14 (1) ensure that customers are protected from deceptive
15 practices in the obtaining of authorizations and verifications
16 required by this section;

17 (2) are applicable to all local exchange telephone
18 service, interexchange telecommunications service, and other
19 telecommunications services provided by telecommunications
20 utilities in this state;

21 (3) are consistent with the rules and regulations
22 prescribed by the Federal Communications Commission for the
23 selection of telecommunications utilities and permit

1 telecommunications utilities to select any one of the following
2 methods of verification of carrier-initiated change orders:

3 (A) written authorization from the customer;

4 (B) toll-free electronic authorization placed
5 from the telephone number which is the subject of the change order;

6 (C) oral authorization obtained by an
7 independent third party; or

8 (D) mailing to the customer an information
9 package consistent with 47 C.F.R. Section 64.1100(d) that contains
10 a postage-prepaid postcard or mailer, without receiving a
11 cancellation of the change order from the customer within 14 days
12 after the date of the mailing;

13 (4) require that in the case of customer-initiated
14 changes of telecommunications utilities, the telecommunications
15 utility to whom the customer has changed its service shall maintain
16 a record of nonpublic customer-specific information that could be
17 used to establish that the customer authorized the change, except
18 that if the Federal Communications Commission requires
19 verification, methods required by the Federal Communications
20 Commission shall be used by telecommunications utilities;

21 (5) provide that changes in the selection of the
22 customer's telecommunications utilities which are not made or
23 verified consistent with the commission's rules shall, on request
24 by the customer, be reversed within a period established by
25 commission ruling;

1 (6) provide that the telecommunications utility that
2 initiated the unauthorized customer change shall:

3 (A) pay all usual and customary charges
4 associated with returning the customer to its original
5 telecommunications utility;

6 (B) pay the telecommunications utility from
7 which the customer was changed any amount paid by the customer that
8 would have been paid to the telecommunications utility from which
9 the customer was changed but for the unauthorized change;

10 (C) return to the customer any amount paid by
11 the customer in excess of the charges that would have been imposed
12 for identical services by the telecommunications utility from which
13 the customer was changed but for the unauthorized change; and

14 (D) provide all billing records to the original
15 telecommunications utility from which the customer was changed to
16 enable the telecommunications utility from which the customer was
17 changed to comply with this section and subsequent rules;

18 (7) provide that the telecommunications utility from
19 which the customer was changed shall provide to the customer all
20 benefits associated with the service on receipt of payment for
21 service provided during the unauthorized change;

22 (8) provide that if the commission finds that a
23 telecommunications utility has repeatedly engaged in violations of
24 the commission's telecommunications utility selection rules, the
25 commission shall order the utility to take corrective action as

1 necessary and the utility may be subject to administrative
2 penalties pursuant to Section 1.3215 of this Act;

3 (9) provide that proceeds of administrative penalties
4 collected under this section be used for purposes of funding
5 enforcement of this section; and

6 (10) provide that if the commission finds that a
7 telecommunications utility is repeatedly and recklessly in
8 violation of the commission's telecommunications utility selection
9 rules, the commission may, if consistent with the public interest,
10 suspend, restrict, or revoke the registration or certificate of the
11 telecommunications utility, thereby denying the telecommunications
12 utility the right to provide service in this state.

13 (b) The commission is granted all necessary jurisdiction to
14 adopt rules required by this section and to enforce the provisions
15 of these rules and this section. The commission may notify
16 customers of their rights under these rules.

17 Sec. 3.313. NOTICE OF IDENTITY OF INTEREXCHANGE CARRIER.

18 (a) A local exchange company shall print on the first page of each
19 bill sent to a customer of the local exchange company the name of
20 the customer's primary interexchange carrier where the local
21 exchange company provides billing services for the primary
22 interexchange carrier. The commission may, for good cause, waive
23 this requirement in exchanges served by incumbent local exchange
24 companies serving 31,000 access lines or less.

25 (b) The bill must contain instructions on how the customer

1 can contact the commission if the customer believes that the
2 carrier named is not the customer's primary interexchange carrier.

3 SECTION 2. Subsection (c), Section 3.051, Public Utility
4 Regulatory Act of 1995 (Article 1446c-0, Vernon's Texas Civil
5 Statutes), is amended to read as follows:

6 (c) Except as provided by Subsections (l), (m), and (s) of
7 this section and Sections [~~Section~~] 3.052, 3.312 and 3.313 of this
8 Act, the commission shall only have the following jurisdiction over
9 all telecommunications utilities who are not dominant carriers:

10 (1) to require registration as provided in Subsection
11 (d) of this section;

12 (2) to conduct such investigations as are necessary to
13 determine the existence, impact, and scope of competition in the
14 telecommunications industry, including identifying dominant
15 carriers in the local telecommunications and intralata
16 interexchange telecommunications industry and defining the
17 telecommunications market or markets, and in connection therewith
18 may call and hold hearings, issue subpoenas to compel the
19 attendance of witnesses and the production of papers and documents,
20 and make findings of fact and decisions with respect to
21 administering the provisions of this Act or the rules, orders, and
22 other actions of the commission;

23 (3) to require the filing of such reports as the
24 commission may direct from time to time;

25 (4) to require the maintenance of statewide average

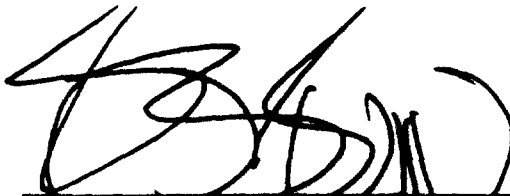
1 rates or prices of telecommunications service;

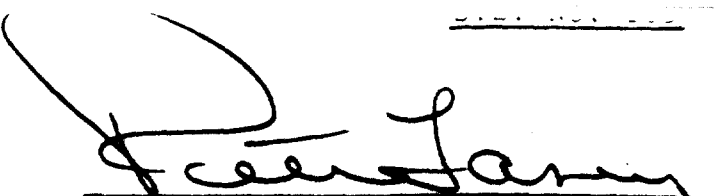
2 (5) to require that every local exchange area have
3 access to local and interexchange telecommunications service,
4 except that a telecommunications utility must be allowed to
5 discontinue service to a local exchange area if comparable service
6 is available in the area and the discontinuance is not contrary to
7 the public interest; this section does not authorize the commission
8 to require a telecommunications utility that has not provided
9 services to a local exchange area during the previous 12 months and
10 that has never provided services to that same local exchange area
11 for a cumulative period of one year at any time in the past to
12 initiate services to that local exchange area; and

13 (6) to require the quality of telecommunications
14 service provided in each exchange to be adequate to protect the
15 public interest and the interests of customers of that exchange if
16 the commission determines that service to a local exchange has
17 deteriorated to the point that service is not reliable.


18 SECTION 3. This Act takes effect September 1, 1997.

19 SECTION 4. The importance of this legislation and the
20 crowded condition of the calendars in both houses create an
21 emergency and an imperative public necessity that the
22 constitutional rule requiring bills to be read on three several
23 days in each house be suspended, and this rule is hereby suspended.

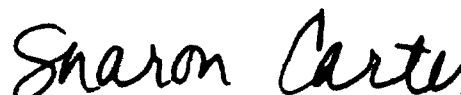

President of the Senate


Speaker of the House

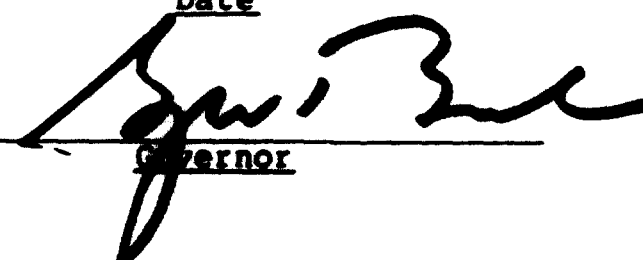
I hereby certify that S.B. No. 253 passed the Senate on
April 1, 1997, by a viva-voce vote. _____


Secretary of the Senate


I hereby certify that S.B. No. 253 passed the House on
May 23, 1997, by a non-record vote. _____


Chief Clerk of the House

Approved:

6.18.97
Date

Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
4:10 pm O'CLOCK

JUN 18 1997

Secretary of State